IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

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**WRIT PETITION NO : 22448 of 1994**

Between:

Sarvepalli Murali Prasad, s/o.late Peda Venkataiah,
r/o.Mogallur village, Podalakur mandal, Nellore district.

**..... PETITIONER**

AND

1)The Joint Collector, Nellore, Nellore district.

2)The Mandal Revenue Officer, Podalakur mandal, Podalakur
Nellore district.

3)Sarvepalli Chinna Venkataiah, s/o.late Chinna
Venkaiah, Occ. Cultivation, r/o.Mogulluru village,
Podalakur mandal, Nellore district.

R.3 is impleaded as per Court Order dated 03.02.2004, in
W.P.M.P.No.1205 of 2004. **.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ more in the nature of Writ of Mandamus or any other appropriate Writ, order or direction declaring the order issued by the first respondent in D.Dis.No.13774/94, dated 1.11.1994 as arbitrary, illegal without jurisdiction and void.

**Counsel for the Petitioner: MR.M.P.CHANDRAMOULI**

**Counsel for the Respondents 1 and 2 : GP FOR ASSIGNMENT**

**Counsel for the Respondent No.3: Mr.Ch.C.Krishna Reddy.**

**The Court made the following :**

**O R D E R :**

Heard both sides.

The petitioner, who is grand son of the original assignee, filed this Writ Petition, *inter alia*, seeking a Writ of Mandamus challenging the impugned order of the first respondent dated 01.11.1994 in D.Dis.No.13774/94 passed in response to the queries raised by the second respondent as a result of application filed by the petitioner and others.

The case of the petitioner, in brief, is that admittedly the land in question, in survey No.285/3 in an extent of Ac.0.67 cents and in survey no.305/2P in an extent of Ac.3.72 cents, is assigned land in favour of the petitioner's grand father, who died leaving behind four sons and therefore, as his legal heir, the petitioner is entitled for the said land. However, having regard to the fact that there have been certain alienations which required to be set aside, the petitioner filed an application before the second respondent to enquire the matter and restore the possession by setting aside all such sales and by dispossessing the persons in possession. However, instead of conducting enquiry, the second respondent had sought some clarification from the first respondent, who in turn reiterated the shares held by the heirs of the original assignee. Subsequently, no enquiry was held by the second respondent nor any orders were passed in regard to the entitlement of, and restoration to, the petitioner or the other heirs who are entitled to. Further, it is also the case of the petitioner that even before passing any such orders by the first respondent giving clarification, the petitioner had no notice and therefore, the impugned proceedings in its entirety, are totally hit by

the principles of natural justice. Hence, the Writ Petition.

The contesting respondent herein namely the third respondent, who is uncle of the petitioner and one of the sons of the original assignee, disputes about the claim made by the petitioner to the entire land and submits that the clarification given by the first respondent herein is only in regard to the shares to which he is entitled in respect of which there can not be any dispute and therefore, there is no necessity of any enquiry, much less notice, and thus, this Writ Petition is liable to be dismissed.

Considering the submissions made and also on perusal of material, it is to be noticed that the petitioner's application is one for seeking restoration of possession on the premise that the land in question is an assigned land made in favour of his grand father and the same land having been sold and in possession of third parties, it requires to be set aside and possession has to be delivered back to the petitioner. Instead of conducting enquiry, the second respondent sought a clarification from the first respondent, whereupon the latter gave clarification about the shares held by the individuals. Even before giving any such clarification, the first respondent had not given any notice to the petitioner or other share holders, who are entitled to the share in the said land. Subsequent to such clarification, no enquiry has been conducted. In view of the same, the only recourse left to the second respondent as contemplated under Law, is to conduct an enquiry by giving notice to all the parties concerned and who are entitled to shares in the said property as legal heirs of the original assignee, and pass orders in accordance with law on merits as to the entitlement or restoration of possession. The second respondent can not simply act on the mere clarification given by the first respondent, which admittedly is without any notice to all the parties concerned. In fact, these are all matters which have to be considered by the second respondent himself, who is statutorily

independent authority, before going into all such questions and coming to any such conclusion.

In the circumstances, the Writ Petition is allowed setting aside the impugned order dated 01.11.1994 passed by the first respondent. The second respondent is directed to conduct an enquiry by giving notice to all the parties concerned i.e. all legal heirs of the original assignee, and pass orders in accordance with law as to the entitlement or restoration, after giving sufficient notice and opportunity. No costs.

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23.09.2004

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice,

On this Thursday, the twenty third day of September, Two thousand and four.

Assistant Registrar.

COPY TO:

1) The Joint Collector, Nellore, Nellore district.

2) The Mandal Revenue Officer, Podalakur mandal, Podalakur,
Nellore district.

3)Two CCs to the G.P. for Assignment, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

4)Two CD copies.